



STATE OF WASHINGTON

STATE BUILDING CODE COUNCIL

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MINUTES STATE BUILDING CODE COUNCIL

Date: January 14, 2005
Location: General Administration Bldg. Auditorium, Olympia

Council Members Present: John Neff, Chair; Peter DeVries, Vice Chair; Dave Baker; Rory Calhoun; Kristyn Clayton; John Cochran; Neva Corkrum; Stephen George; Mari Hamasaki; Tom Kinsman; Steve Mullet; Steve Nuttall; Terry Poe; Dale Wentworth; Ron Fuller

Visitors Present: Bob Eugene, Warren Shill, Kraig Stevenson, Joe Andre, Chris Edmark, Greg Nelson, Chuck Day, Jan Conklin, Paul O'Connor, Maureen Traxler, Steve Swarthout, Dwight Perkins, Andy Cook, Charles De Montigny, Michael Barth

Staff Present: Tim Nogler, Al Rhoades, Krista Braaksma, Sue Mathers

CALL TO ORDER

In the absence of a Chair and Vice Chair, John Cochran, Executive Committee member, called the meeting to order at 10 a.m. Introductions were made, and new Council members welcomed.

ELECTION OF OFFICERS

John Cochran opened the floor for nominations for Chair and Vice Chair.

Motion #1:

Dave Baker nominated John Neff for the office of Chair of the State Building Code Council. Rory Calhoun seconded the motion.

John Cochran asked for further nominations.

Motion #2:

Steve Nuttall nominated Peter DeVries for the office of Council Chair. Rory Calhoun seconded the motion.

John Neff presented a brief self-portrait to aid voters. He is the building official, fire marshal and capital projects manager for the City of Lacey. That jurisdiction supports his seeking this office. John has been involved with codes for 28 years. This is his third year on the Council. One reason why John is seeking this office is because he feels the Council is overlooked by the public, generally lacking the publicity afforded other boards and commissions. Yet, he said, that Council members have a huge responsibility to protect the public safety. The impact of Council action on state economics and the work of construction trade professionals is also tremendous. A second reason why John seeks the position of Council Chair is because he is located in Olympia, with easy access to the Legislature and Council staff.

Peter DeVries agreed with John Neff about the importance of the Council, in ensuring the safety and welfare of the citizens of Washington State. Formerly, Peter was a college administrator and president of Big Bend Community College in Moses Lake. Since retiring he's been involved in architectural design of residences and commercial buildings. Peter said his nomination is an honor.

The question was called for on the election of Chair of the Council. John Neff was elected Chair, with 10 aye votes, compared to 4 aye votes for Peter DeVries.

John Cochran relinquished the gavel to John Neff. John Neff asked for nominations for Council Vice Chair.

Motion #3:

Dave Baker nominated Peter DeVries as Vice Chair of the State Building Code Council. John Cochran seconded the motion.

John Neff called for further nominations. Lacking other nominations, the question was called for. Peter DeVries was unanimously elected as Council Vice Chair.

REVIEW AND APPROVE AGENDA and MINUTES

Tim Nogler suggested switching Items 6 and 7, discussing the 2005 workplan before making committee assignments. With that amendment, the agenda was approved.

The minutes of the November 12, 2004, Council meeting were reviewed and approved as written.

PUBLIC COMMENT ON ITEMS NOT COVERED BY THE AGENDA

Chuck Day, Director of Regulatory Affairs for Adair Homes, suggested that the Washington Association of Building Officials (WABO) support an educational effort to provide building officials with a better understanding of the International Residential Code (IRC). Chuck said such an educational effort is important to Adair Homes because it currently faces difficulty in meeting its goal of building value-priced homes in multiple jurisdictions that each interpret the IRC differently. Uniformity will eventually occur, after several years of using the new code. Chuck said his suggestion will speed up that process and help Washington citizens who have a modest income become homeowners. Having been on the Council's Building Code TAG and chairing the IRC SubTAG, as well as having years of building experience in Washington and Oregon using an IRC-based code, Chuck said he can, and would be glad to, assist such an effort.

Dave Baker sympathized with Chuck. He agrees that construction and building trades workers have been struggling during the past six months interpreting the IRC. He suggested that Chuck contact the Building Industry Association of Washington (BIAW), if he hasn't already done so.

John Neff suggested Chuck may wish to include specific jurisdictions in the educational effort.

John Cochran asked if inconsistencies are found at the building official/code interpretation level or the field inspection level? Chuck said inconsistencies exist at both levels. However, in the early stages of using the code, inconsistencies are more prevalent at the plan review level, particularly regarding Chapters 4 and 6 of the IRC. He said field inspection generally follows plan review.

2005 WORKPLAN

Tim called attention to and explained the technical advisory group (TAG) review and code adoption 2005-2006 calendar and draft workplans for the building code, fire code, mechanical and ventilation codes, plumbing code and energy code TAGs. He said the Legislature created the State Building Code Council to advise on building code issues to best ensure the health and safety of Washington's citizens. There was concern last session that the Council failed to advise the Legislature about controversial provisions in the International Fire Code, specifically relating to barbeques and Christmas trees. Tim said the appropriate place for such information to surface is at the TAG level.

For the benefit of new members, Tim provided some Council history. He said the Council establishes the minimum statewide code. Cities and counties enforce the code. The Council has no enforcement authority. Cities and counties may amend the code but may not reduce the state minimum. Local amendments to one-to-four-unit residential

buildings must be approved by the Council prior to local enactment. Tim anticipates that several local ordinances will be on the agenda at the March meeting of the Council.

Consistency with other state agencies is important to maintain. Tim said the Council works closely with the State Fire Marshal's Office, the Department of Labor and Industries, the Department of Health, and the Department of Social and Health Services, among others.

Tim said one charge of the Council is rulemaking. Historically, rules are adopted during the Council's November meeting, since December 1 is the statutory deadline for rule adoption. Rules adopted by the Council must sit through one legislative session before becoming effective. The adoption of rules requires a majority vote of Council members. Since there are 15 Council members, rules are adopted by eight affirmative votes.

The Council's money comes from a dedicated fund, rather than the State General Fund. The balance coming into this biennium was about \$360,000. Currently the balance is about \$550,000. The staff level is currently four.

Peter DeVries asked if the building permit fee, \$4.50, remains constant or varies based on the total cost of a building project? Tim responded that it remains constant at \$4.50 for each project, regardless of its size, with an additional \$2.00 per additional unit in a multi-family residential building.

Rory Calhoun asked about the consistency of building permits and the variability of economics. John Neff said that historically when the economy forces a reduction in the construction of new homes, homeowners add on or remodel. He said local jurisdictions actually issue more permits during those times.

Tim said last year the state of Washington changed from Uniform to International codes, except for the plumbing code, which remained Uniform. The state has had about six months experience using the International codes. Last year was the first year of a three-year cycle. Model code books are published every three years.

Tim noted the Council's policy is to minimize the number of state amendments and to change focus from the state to the national level. Tom Kinsman asked if the move to a national rather than a state focus is written Council policy. Tim answered that it's an executive policy issue, accomplished through rulemaking, in accordance with the bylaws.

March 1 of each year is the deadline for the submission of statewide amendment proposals. Between March and June, TAGs review proposed amendments. The deadline for Council action on TAG review of statewide amendments is the June meeting. Approved proposals then go into the rulemaking process.

Tim said the TAGs report back to the two committees of the Council, the Building, Fire and Plumbing Codes Committee, and the Mechanical, Ventilation and Energy Codes Committee. Last year those committees didn't meet. Rather the Council met as a whole,

and TAG reports came directly from TAGs to the Council, missing the intermediate step of committees.

COMMITTEE ASSIGNMENTS

Tim reviewed the committees. Tom Kinsman and Dale Wentworth volunteered to be on the Building, Fire and Plumbing (BFP) Codes Committee. Therefore, the roster of the BFP Committee includes John Cochran, Chair; Dave Baker, Vice Chair; Rory Calhoun; Tom Kinsman; John Neff; Steve Nuttall and Dale Wentworth. Peter DeVries volunteered to be Chair and Mari Hamasaki volunteered to be Vice Chair of the Mechanical, Ventilation and Energy (MVE) Codes Committee. Kristyn Clayton, Stephen George and Dale Wentworth volunteered to be members of the MVE Committee. Other members include John Neff and Terry Poe.

Steve Mullet volunteered to be Chair of the Legislative Committee. Membership of the Legislative Committee otherwise remains the same: Dave Baker, Vice Chair; John Cochran; Neva Corkrum; Peter DeVries; John Neff and Steve Nuttall. Dave Baker volunteered as Chair and Steve Mullet as Vice Chair of the Economic Committee. Stephen George volunteered to be a member of the Economic Committee. Other members include Rory Calhoun and John Neff.

The new Executive Committee consists of the Council Chair, Vice Chair and Chairs of Committees. Thus membership consists of John Neff, Chair; Peter DeVries, Vice Chair; Dave Baker; John Cochran and Steve Mullet.

Motion #4:

Dave Baker moved committee assignments as outlined above. Peter DeVries seconded the motion. The motion was unanimously adopted.

TAG APPOINTMENTS

Tim said that Chairs are needed for the Plumbing Code TAG and the Mechanical/Ventilation Codes TAG, and a Council member is needed to join the Energy Code TAG. Mari asked Al about duties of the Chair position. Al answered that the Chair runs the meeting, similar to how John Neff is running this meeting. The Chair also determines when and where the TAG meets, and for what purpose. Meetings are dictated by the TAG workplan, at the discretion of the Chair. Another duty of the Chair is to determine when consensus is reached upon issues. Consensus is what determines what will be included in the report from the TAG to the Committee and the Council. Steve Nuttall, Chair of the Fire Code TAG, encouraged new members, saying now is an excellent time for new chairs to get involved, preparatory to the 2006 code cycle. John Cochran, Chair of the Building Code TAG, complimented Council staff in facilitating meetings and providing technical advice. Mari volunteered to chair the Mechanical/Ventilation Codes

TAG. Kristyn Clayton, a past member of the Energy Code TAG, volunteered to rejoin that group.

Dave asked if Council members, other than those specifically named as members of TAGs, could participate in TAGs as voting members. Steve Nuttall said TAG decisions are generally made on a consensus basis. He's always encouraged Council members to participate on the Fire Code TAG.

Dale Wentworth volunteered to be Chair of the Plumbing Code TAG.

Motion #5:

Steve Nuttall moved adoption of all TAG workplans as presented in draft form. John Cochran seconded the motion.

Dave, noting that each TAG workplan lists the review of statewide amendments, asked if the Council advertises that statewide amendments are accepted each year until March 1. Tim answered that while amendments aren't solicited by advertisement, notice that they may be submitted through March 1 of each year is printed in the preface of the code insert pages.

The question was called for. Motion #5 was unanimously adopted.

INTERPRETATION REQUEST – CITY OF SAMMAMISH

Al called attention to a draft letter to the City of Sammamish in response to its interpretation request, a memorandum from the Council's Assistant Attorney General, Richard McCartan, issuing his informal opinion in response to the questions raised in the interpretation request, and the original request from the City of Sammamish. Tim and John Neff clarified that the questions in the interpretation deal with the application of law regarding Council authority.

Gary Nelson, William Buchan Homes, said that the townhouse project behind the interpretation request by the City of Sammamish was approved by King County over six years ago. The commercial site development plan was approved and permits issued by King County. Then the jurisdiction where the project is located changed from King County to the City of Sammamish. The project has now been put on hold by the City of Sammamish for over eight months. A quick response from the Council is sought by Mr. Nelson, to allow this project to proceed during the upcoming construction season.

Mr. Nelson pointed out that Richard McCartan's memorandum gives Richard's personal opinion. Even though it's not an official Attorney General Opinion (AGO), the city may treat it as such. Mr. Nelson questioned the validity of the basis for Mr. McCartan's opinion, that since "apartment house" is ambiguously defined in the Revised Code of Washington (RCW), it can be modified by Washington Administrative Code (WAC) language. He said the WAC clearly changes an exception specifically provided in statute

and expands the limitation of 10 units per building to 10 units per site. Further expansion of the limitation by Mr. McCartan would include R-3 occupancies. Mr. Nelson said the terms “site” in the WAC (parcel of land bound by a property line) and “apartment house” in the RCW (any building or portion thereof which contains three or more dwelling units) are inconsistent unless “property line” in Chapter 5 of the UBC is applied.

John Neff said that at the last meeting the Council decided that Sammamish’s request dealt not with an interpretation, but rather with a legal definition. He said the Council asked Richard McCartan to resolve the WAC/RCW conflict, which he did. John said the sole definition of “apartment house” that can be used is what appears in the state disability statute, RCW 70.92.

Gary Nelson said that the 1994 UBC defines “buildings,” “structures” and “apartment houses.” Webster’s dictionary defines these terms differently.

John Neff said the Council’s role is extremely narrow. The Council is authorized to interpret WAC rules it adopts, while the interpretation request asks whether the WAC rule conforms with state law. He said it’s a matter of law rather than something the Council has the authority to resolve. Mr. Nelson asked the Council to refer the City of Sammamish to WAC 51-40-007.

Mr. Nelson said that the draft letter from the Council to the City of Sammamish says that Richard McCartan’s memorandum constitutes an official AGO which the Council has reviewed and with which it agrees. Then the Council throws the issue back to the local jurisdiction.

John Cochran sympathized with Mr. Nelson. He said the City of Sammamish is renegeing on a previous approval.

Al Rhoades noted that Jan Vogee, Building Official for the City of Sammamish, is well versed in code requirements. She’s waiting for Council direction. Peter DeVries asked if the Council can do anything to help William Buchan Homes. John Neff answered no. He said the Council has no enforcement authority or oversight over the enforcement or administration of any local jurisdiction. John Neff said the Council has a very narrow focus. The question asked is outside the purview of the Council.

Steve Mullet asked if there’s still a moratorium in Sammamish. Tim answered yes. Mr. Nelson responded that Wm. Buchan Homes is exempt from it. Steve Mullet suggested that Tim reword the draft letter to more specifically state that the question asked is not something the Council has authority to act on. He would like the Council’s position to be clearly neutral. John Neff said he didn’t think such action would create an impasse.

Dave said he thinks Richard McCartan’s memorandum is incorrect, based on today’s testimony that the project was previously approved by county government. Richard’s response was made without all the facts being known. Dave feels the City of Sammamish should issue the permit that was previously agreed to.

Steve Nuttall suggested that a board of appeals at the local level might be an appropriate body to decide this issue. Gary Nelson said the City of Sammamish abolished the court of appeals.

Tim said the draft letter to the City of Sammamish can be redrafted to clearly state that the issue raised by the interpretation request is the responsibility of the local jurisdiction. Then that letter will be circulated to Council members for their approval before being sent to the City of Sammamish. Since the memorandum from Richard McCartan is public record, it doesn't need to accompany it. At the consensus of Council members, John Neff asked Tim to redraft the letter to so state. Al said Jan Vogee is aware of Richard McCartan's memo.

CERTIFICATION OF ACCESSIBILITY CODE

Al said the Washington State Regulations for Barrier-Free Facilities were certified by the U.S. Department of Justice (DOJ) on March 29, 1995 as meeting or exceeding the accessibility requirements of the Americans with Disabilities Act (ADA). However, the state code was substituted with the accessibility requirements of the 2003 International Building Code (IBC) when the state adopted it, effective July 1, 2004. The IBC adopts by reference the accessibility standard, ICC/ANSI A117.1-1989. State amendments update that standard, effective July 1, 2005. The substitution and update are now requested to be submitted to DOJ for certification.

The first step in the certification process is a public hearing, since the certification request to DOJ must be accompanied by a record of a hearing held to inform the public of the Council's intent to seek certification.

Motion #6

Steve Nuttall moved that the Council request certification of updated accessibility requirements from the Department of Justice and schedule a public hearing on that topic. John Cochran seconded the motion.

Tom Kinsman asked how many other states are going through a similar certification process. Al answered that a few are, 6-8 other states. Rory said the DOJ is in the process of receiving testimony on an Advanced Notice of Rulemaking to update its ADA standards. Once the testimony has been reviewed, an effective date will be established. Rory anticipated that it will be anywhere from six months to one and one-half years before the effective date is established.

The question was called for. Motion #6 was adopted, 10 aye to 1 nay.

LEGISLATIVE UPDATE

Tim said that the Legislative Committee is monitoring several bills: HB 1062, energy efficiency standards; HB 1272/SB 5509, green building standards; and HB 1401/SB 5374, fire safety. However, to date there's no legislation that's critical to the Council.

STAFF REPORT

Tim reported that Council staff will be participating in the International Code Council code development hearings in Cincinnati. Tim encouraged Council members interested to participate. The hearings are scheduled February 21 through March 4.

ADJOURNMENT

Lacking further business, the meeting adjourned at 12:37 p.m.